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**In the
Court of Criminal Appeals of Texas
At Austin**

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Appellate No. NO. 09-18-00218-CR and NO. 09-18-00219-CR

In the Court of Appeals for the Ninth District

Bradley Jacobs Shumway, *Appellant*

v.

The State of Texas, *Appellee*

APPELLANT/PETITIONER'S BRIEF

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ISSUE 1

Does the corpus delicti rule require evidence totally independent of a defendant's extrajudicial confession showing that the 'essential nature' of the charged crime was committed by someone?

ISSUE 2

Can independent evidence as to time, motive, opportunity, state of mind of the defendant, and/or contextual background information satisfy the corpus delicti rule in an indecency with child charge when there is zero evidence of sexual contact?

ISSUE 3

Is the evidence legally sufficient to support convictions for indecency with a child when the independent evidence does not tend to establish sexual contact?

ISSUE 4

Did the Ninth Court of Appeals improperly circumvent The Court of Criminal Appeals 2015 ruling on corpus delicti doctrine in *Miller v. State*, 457 S.W.3d

919 (TEX. CRIM. APP. 2015) which expressly declined to use a trustworthiness standard regarding the legal sufficiency of confessions?

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STATEMENT OF THE CASE

A grand jury returned two indictments charging the Petitioner with the commission of the offenses of aggravated sexual assault of a child under six years of age and indecency with a child. (15229 C.R. 30, 12127 C.R. 8). Upon the Petitioner's pleas of not guilty, a jury found the Petitioner guilty of indecency with a child in each case and assessed his punishment in each case at imprisonment for twenty years and payment of a \$5000 fine. (15229C.R. 118, 12127 C.R. 78). The trial court ordered that the sentences be served consecutively. (V R.R. 158). On May 18, 2018, Petitioner gave notice of appeal. (15229 C.R 86, 12127 C.R. 136).

The Ninth District Court of Appeals of Beaumont affirmed and delivered its Opinion in NO. 09-18-00218-CR and NO. 09-18-00219-CR, BRADLEY JACOBS SHUMWAY, Appellant v. STATE OF TEXAS, Appellee on 8 January 2020. No Motion for Rehearing was filed. A Motion to Publish was filed on 26 March 2020 and denied on 8 April 2020. Petition for Discretionary Review was filed on 7 April 2020 and granted with oral argument on 1 July 2020. At issue on appeal is the application of the corpus delicti rule.

ISSUES PRESENTED

Shumway gave extrajudicial confessions to the crimes of indecency with a child, the Ninth Court of Appeals found the evidence to be legally sufficient when it determined that evidence independent of Shumway's confessions, "tend to corroborate Shumway's confessions and serve to make it more probable that the crimes occurred than without such evidence."

ISSUE 1

Does the corpus delicti rule require evidence totally independent of a defendant's extrajudicial confession showing that the 'essential nature' of the charged crime was committed by someone?

ISSUE 2

Can independent evidence as to time, motive, opportunity, state of mind of the defendant, and/or contextual background information satisfy the corpus delicti rule in an indecency with child charge when there is zero evidence of sexual contact?

ISSUE 3

Is the evidence legally sufficient to support convictions for indecency with a child when the independent evidence does not tend to establish sexual contact?

ISSUE 4

Did the Ninth Court of Appeals improperly circumvent The Court of Criminal Appeals 2015 ruling on corpus delicti doctrine in *Miller v. State*, 457 S.W.3d 919 (TEX. CRIM. APP. 2015) which expressly declined to use a trustworthiness standard regarding the legal sufficiency of confessions?

STATEMENT OF FACTS

A. Extrajudicial Confessions

Petitioner, Bradley Shumway (“Shumway”) gave two extrajudicial confessions, one to his church Bishop and the other to his wife.

In September 2016, Thad Jenks a Bishop at Shumway’s church, testified that Shumway confessed to him that he had touched an eighteen-month-old girl’s genitals with his hands, his tongue, and his penis while Shumway and his wife were babysitting their friends’ children. (III R.R. 42-43).

Bradley Shumway then related the same story to his wife, Christin Shumway (“C.S.”). (III R.R. 58). C.S. testified that Shumway told her that he had talked to the bishop and needed to talk to her about something that happened while they were watching their friends’ children. (III R.R. 58). Shumway said to C.S., “I’m just going to put it out there, that while they were here, I touched [K.J.’s] genitals with my hand, my mouth, and my penis” (III R.R. 58).

B. No evidence of sexual contact

Outside of the extrajudicial confessions, the record contains no facts which indicate any sexual contact with the child K.J. or any touching by Shumway whatsoever.

C. Background Evidence

August 4 to August 6, C.S. and Bradley Shumway were babysitting their friends Lina and Jordan Jensen's children, Kara ("K.J.") and Tucker while the Jensens were away on away on an anniversary trip. (III R.R. 57, 63-64, 104). The Jensens were good friends of the Shumways, and the Shumways had cared for the Jensen's two children on several occasions (III R.R. 54-55).

At the time of the alleged incident, K.J. was eighteen months old, she did not speak well, did not know many words, and did not speak in sentences. (III R.R. 116). K.J. never spoke of a sexual molestation by the appellant (III R.R. 116).

C.S. testified to background information related to Shumway's confession. Shumway told C.S. that she was "irresponsible to not put the shorts back on [K.J.] after changing her diaper," and indicated that his conduct had "something to do with" K.J. "walking around in a diaper instead of with shorts on" (III R.R. 62–63). She remembered that K.J.'s shorts were too small and that she left them off after changing K.J.'s diaper, allowing K.J. to walk around in her diaper (III R.R. 62-3, 65). C.S. stated that Shumway said he touched K.J. when he and the child were indoors, and she was on the back patio talking to their daughter. (III R.R. 59, 66). C.S. remembered

sitting on the patio talking to their daughter. Id. C.S. remembered that afterwards the appellant “was fasting a lot and somewhat withdrawn . . . a little more than usual,” and she remembered him leaving to attend a meeting with their bishop (III R.R. 67).

According to C.S., Shumway provided various reasons for his conduct:

(1) that he was “curious whether it would give him an erection”, (III R.R. 60).

(2) that “there were emotional reasons,” he felt very angry and neglected...and ...that he was feeling strange thoughts and temptations.”, and (III R.R. 61)

(3) that he felt sexually and emotionally neglected when C.S. went to lunch with her friends (III R.R. 62)

D. Examination of Child

Upon learning that sexual contact may have been made with K.J., the Jensens took K.J to be examined by health and forensic professionals. (III R.R. 107, 109, 111). An examination by a pediatrician revealed that K.J. did not have any sexually transmitted diseases, and that she had no injuries. (III R.R. 108-109; State’s Exhibit #7 [VI R.R. 16-19]). In addition, K.J. and her brother were taken to Children’s Safe Harbor for a forensic examination. (III

R.R. 111). A Sexual Assault Nurse Examiner (SANE), performed an examination and found no evidence of injury, the report specifically notes no body surface injuries and no injuries to the genital or anal areas. (III R.R. 87, 93-94, State's Exhibit 6 [VI R.R. 10-15]).

SUMMARY OF ARGUMENT

SUMMARY OF ARGUMENT ISSUE 1

In 2015 the Court of Criminal Appeals reaffirmed the corpus delicti rule and stated that it requires "evidence independent of a defendant's extrajudicial confession show[ing] that the 'essential nature' of the charged crime was committed by someone." *Miller v. State*, 457 S.W.3d 919, 924 (TEX. CRIM. APP. 2015)

SUMMARY OF ARGUMENT ISSUE 2

Evidence as to time, motive, opportunity, state of mind of the defendant, and/or contextual background information cannot satisfy the corpus delicti rule in an indecency with child case when there is zero independent evidence of sexual contact. *Miller v. State*, 457 S.W.3d 919, 924 (TEX. CRIM. APP. 2015); *See Hacker v. State*, 389 S.W.3d 860, 865-866

(TEX. CRIM. APP. 2013); *Salazar v. State*, 86 S.W.3d 640 (TEX. CRIM. APP. 2002)

The rule has been understood to require independent evidence of the *corpus delicti*, not simply support for credibility of the confession. *Gribble v. State*, 808 S.W.2d 65, 70 (TEX. CRIM. APP. 1990). Evidence showing motive, intent, opportunity, and the state of mind of a defendant are not probative evidence absent evidence that conduct occurred that could tend show sexual contact of an indecency with child. See *Hacker v. State*, 389 S.W.3d 860, 873.

SUMMARY OF ARGUMENT ISSUE 3

The evidence is legally insufficient to support convictions for indecency with a child when the evidence independent of the extra-judicial confessions does not tend to establish sexual contact. The corpus delicti or the essential elements of indecency with a child is the “sexual touching of the child with the intent to arouse or gratify the sexual desire of any person.” See *Salazar v. State*, 86 S.W.3d 640, 645). The record is devoid of any evidence of sexually touching the child.

a defendant's extrajudicial confession does not constitute legally sufficient evidence of guilt absent independent evidence of the corpus delicti." *Id.* To satisfy the corpus delicti rule, there must be

"evidence independent of a defendant's extrajudicial confession show[ing] that the 'essential nature' of the charged crime was committed by someone." *Id.* at 866; see *Salazar v. State*, 86 S.W.3d 640 (TEX. CRIM. APP. 2002).

Miller v. State, 457 S.W.3d 919, 924 (TEX. CRIM. APP. 2015)

SUMMARY OF ARGUMENT ISSUE 4

The Ninth Court of Appeals improperly circumvented The Court of Criminal Appeals 2015 ruling on corpus delicti doctrine in *Miller v. State*, 457 S.W.3d 919 (TEX. CRIM. APP. 2015). In *Miller v. State*, the Court reaffirmed the corpus delicti doctrine and expressly declined to use a trustworthiness standard regarding the legal sufficiency of confessions. *Id.* at 926-927. The Court of Appeals was aware of *Miller v. State* as it is cited in its Memorandum Opinion on Page 12. Regardless, the Ninth Court of Appeals instead disguises trustworthiness doctrine and calls it corroboration of the confession. Examination of the independent evidence here clearly shows the Court of Appeals did not follow corpus delicti precedent because the court found the evidence legally sufficient despite zero evidence regarding the essential nature of an indecency with a child charge. The extrajudicial confession was not corroborated by evidence of any sexual contact.

ARGUMENT

Issues 1-4 are grouped together in one argument section as the material facts and law progress from each issue and the later relies on the former.

With respect to extrajudicial confession cases, the Ninth Court of Appeals holding now lays the foundation to back-door a trustworthiness of confession rule disguised within the framework of the corpus delicti rule. One hundred and sixty-six (166) years of corpus delicti jurisprudence may face extinction if the Court of Criminal Appeals does not intervene.

Implicit in the Ninth's holding is the expansion of what type of evidence properly "corroborates" an extrajudicial confession and the notion that the corpus delicti rule is satisfied when independent evidence falls short of tending to establish, *the corpus delicti*, or the essential nature of the crime.

A. Corpus Delicti Jurisprudence

In 2015 the Court of Criminal Appeals reaffirmed the corpus delicti rule and notes that it has been applied for more than "one-hundred-sixty-years."

Miller v. State, 457 S.W.3d 919, 927 (TEX. CRIM. APP. 2015).

The corpus delicti rule is one of evidentiary sufficiency affecting cases in which there is an extrajudicial confession. See *Hacker v. State*, 389

S.W.3d 860, 865 (TEX. CRIM. APP. 2013). The rule states that, "[w]hen the burden of proof is 'beyond a reasonable doubt,' a defendant's extrajudicial confession does not constitute legally sufficient evidence of guilt absent independent evidence of the corpus delicti." *Id.* **To satisfy the corpus delicti rule, there must be "evidence independent of a defendant's extrajudicial confession show[ing] that the 'essential nature' of the charged crime was committed by someone."** *Id.* at 866; see *Salazar v. State*, 86 S.W.3d 640 (TEX. CRIM. APP. 2002).

Miller v. State, 457 S.W.3d 919, 924 (TEX. CRIM. APP. 2015) (emphasis added)

The rule has been understood to require independent evidence of the *corpus delicti*, not simply support for credibility of the confession. *Gribble v. State*, 808 S.W.2d 65, 70 (TEX. CRIM. APP. 1990). Moreover, the Gribble court stated the policy reason for the corroboration requirement:

the essential purpose of the *corroboration requirement* is to assure that no person be convicted without **some independent evidence showing that the very crime to which he confessed was actually committed.** *Id.* at 71.

B. The Court of Appeals modifies the corpus delicti rule

In Petitioner's cases, the Ninth Court of Appeals disregards long standing precedent and trivializes the corpus delicti corroboration

requirement of independent evidence to show the “essential nature of the crime” being committed by someone.

Implied within the Ninth Court of Appeals’ Memorandum Opinion is the notion that evidence independent of an extrajudicial confession is not necessary to show the corpus delicti of indecency with child. Evidence that *corroborates* the contextual background of an extrajudicial confession which may show motive, opportunity, and post state of mind of a defendant satisfies the corpus delicti rule.

1. Independent evidence does not corroborate the extrajudicial confessions

The Ninth Court of Appeals claims that the independent evidence from C.S. “tends to corroborate Shumway’s confessions” and serve to make it more probable that the crimes occurred than without such evidence. (Opinion pg 15). The Court specifically referenced C.S.’s testimony as to background facts which are summarized below: (Opinion pg 14-15):

1. she and Shumway watched the child complainant (K.J.) while the child’s parents were on a weekend anniversary trip,
2. during that time, she left K.J.’s shorts off because they were too small and allowed K.J. to run around in a diaper,
3. a period of time when she and her daughter were on the patio while Shumway was inside the house with K.J.,
4. after the weekend Shumway fasted a lot and was somewhat withdrawn, and

5. Shumway went to speak to the Bishop.

With this evidence the Court of Appeals makes a gigantic conclusory unreasonable leap to corpus delicti corroboration without any explanation.

The corpus delicti or the essential elements of indecency with a child is the “**sexual touching of the child** with the intent to arouse or gratify the sexual desire of any person.” (Opinion Pg 13; See *Salazar v. State*, 86 S.W.3d 640, 645). The record is devoid of any evidence of sexually touching the child, K.J.; therefore, the court incorrectly found that the evidence corroborates the extrajudicial confessions.

2. Independent evidence must at least tend to show the essential nature of indecency with child.

In its analysis Ninth Court of Appeals relies upon *Salazar v. State*, 86 S.W.3d 640,645 (TEX. CRIM. APP. 2002), *Fountain v. State*, 401 S.W.3d 344, 353 (Tex. App.—Houston [14th Dist.] 2013, pet. ref’d), and *Rocha v. State*, 16 S.W.3d 1, 4 (TEX. CRIM. APP. 2000) to support its position.

Contrary to the independent evidence in issue here, in each case relied upon by the Ninth Court, the evidence independent of the extrajudicial confession tends to show the 'essential nature' of the charged crime was committed by someone. See *Miller v. State*, 457 S.W.3d 919, 924.

In *Salazar*, the defendant gave an extrajudicial confession in which he admitted to aggravated sexual assault a child by putting the child's penis in his mouth. *Salazar v. State*, 86 S.W.3d 640, 642-643. At trial other witnesses confirmed sexual contact and the defendant testified that he put his penis on the child's mouth. *Id.* at 642,645. The corpus delicti rule was satisfied by some independent evidence that someone had sexual contact with Julian's private part and that the act was performed with criminal intent. *Id.* at 645. *Salazar* actually hurts the Ninth's position because in Shumway's case there is no independent evidence of any sexual contact that was performed with criminal intent, the corpus delicti rule was not satisfied. See *Salazar v. State* at 645.

The Ninth's reliance on *Fountain* to support its finding that the independent evidence tended to establish that the offenses occurred is also flawed because in *Fountain* the independent evidence gives reason to believe the defendant caused the death of his child and in Petitioner's case the independent evidence does not give reason to believe Shumway sexually touched a child. In *Fountain* the Court of Appeals found the evidence to be legally sufficient to support the corpus delicti of felony murder. *Fountain v. State*, 401 S.W.3d 344, 353. The evidence showed that the defendant was the last and sole caretaker for his three-year-old child at an

apartment complex when the child suddenly vanished. *Id.* The neighbor and the maintenance man did not observe the defendant looking for the child, and responding police testified that he appeared unconcerned about the disappearance of his child. *Id.* The evidence demonstrated that the defendant had a history of consistently abusing the child and causing physical injuries; and he was the last known person to see the child alive. *Id.* at 355. Evidence also showed that the defendant's last known interaction with the child involved him hitting the child in anger and the child was never seen again after he stopped crying. *Id.* Cell phone location records contradict the defendant's statement that he and the child were asleep at the apartment until 9am. *Id.* at 353. The Court found the independent evidence tended to render it more probable than not that the child died by criminal means. *Id.* at 355. In this case the independent evidence indicated the 'essential nature' of the charged crime was committed by someone because the defendant historically and close in time to the child's disappearance physically abused the child, the defendant was responsible for the child at the time, and the child was never found. See *Miller v. State*, 457 S.W.3d 919, 924.

In *Rocha*, the Court of Criminal Appeals, while referring to independent evidence, stated that "all that is required is that there be some evidence which renders the commission of the offense more probable than it would be

without the evidence." *Rocha v. State*, 16 S.W.3d 1, 4. The defendant was charged with capital murder, The Court of Criminal Appeals held that the corpus delicti requirement extends to both the murder and the underlying offense, in this case robbery. *Id.* at 2,5. The independent evidence indicated that a security guard's gun was stolen during a physical attack and the attack resulted in a murder because one witness testified that the guard was confronted by two men who demanded and reached for his gun and that a shooting subsequently occurred; and a second witness confirmed that shortly after the shooting the guard had been shot and that his gun was missing. *Id.* at 5. The evidence established that the 'essential nature' of the charged crime was committed by someone because witness testimony tends to show that that that security guard's gun was taken, and he was shot and killed. See *Miller v. State*, 457 S.W.3d 919, 924.

The Court of Appeals' cited cases are in line with *Miller v. State's* essential core that the independent evidence alone must show the essential nature of the charged crime, but the Court failed to apply the proper standard and must be reversed.

3. Independent Evidence does not show Shumway made sexual contact with K.J.

C.S.'s testimony, as referenced by the Ninth, does not at all tend to show a sexual touching of a child with an intent to gratify sexual desire. C.S. did not witness Shumway touch K.J. and clearly did not observe any facts which would tend to show a sexual touching. Outside of the extrajudicial confessions, the record as a whole contains zero facts which indicate a sexual touching or contact.

4. Independent Evidence only tends to show contextual background as to time, place, motive, and opportunity

At most C.S.'s referenced testimony tends to show that K.J. was in Shumway's presence for a weekend and that he may have been alone with K.J. while she was wearing only a diaper. Shumway's post weekend fasting and being withdrawn is not an act upon K.J. and indicates nothing without some evidence of sexual contact by Shumway. This type evidence may show time, place, opportunity, and the parties but it does not tend to indicate a criminal act by Shumway.

Additionally, the Court of Appeals points out other inconsequential testimony from the Bishop and K.J.'s mother without any further explanation. The referenced evidence only establishes that Shumway visited with his

Bishop in September of 2016, and that K.J. was left with the Shumway's in August of 2016. (Opinion Pg 15). Once again, the evidence only gives contextual background to the timing of Shumway's confession and that he may have had time and an opportunity with K.J.. Even if considered with C.S.'s referenced testimony these facts do not tend to show Shumway making physical contact with K.J. let alone a sexual contact. It simply shows Shumway may have been alone with KJ , that he may be religious, and seeking counsel from his religious leader.

Although not mentioned by the Court of Appeals in its analysis, C.S. also testified to Shumway's reasons for his conduct. (III R.R. 60-62). Shumway's reasons may show motive, but like the testimony as to contextual background as to time, place, and opportunity, it does not tend to show a sexual contact.

The Court of Appeals does not discuss any evidence which tends to confirm any part of the corpus delicti, the referenced evidence and even motive do not make the crime of indecency with a child more likely to have occurred than without such evidence because the independent evidence under any reasonable interpretation fails to show the essential nature of the crime, a sexual contact.

5. Ninth Court of Appeals did not follow the corpus delicti rule

The error is the Ninth Court of Appeal's failure to adhere to the corpus delicti rule requiring that the independent evidence corroborate the corpus delicti from the extrajudicial confession before finding the evidence legally sufficient to convict. See *Gribble v. State*, 808 S.W.2d 65, 70 (TEX. CRIM. APP. 1990). The Ninth incorrectly held that the corpus delicti rule was satisfied here because the independent evidence does not corroborate the corpus delicti of the confessed crime of indecency with a child in other words the independent evidence does not tend to show the essential nature of indecency with child, specifically it does not show a sexual contact.

6. The Ninth Court of Appeals backdoors a trustworthiness of confession rule

The Ninth Court of Appeals disguises its intent to loosen up the corpus delicti rule under the cover that independent evidence "corroborates" Shumway's confession. There is no explanation. No clarification on how this independent evidence makes the crime more probable than not under the corpus delicti rule. A closer examination identifies that the so-called corroborating testimony only tends to add some credibility and trustworthiness to Shumway's extrajudicial confessions by matching

contextual background facts of time, place, motive, and opportunity and his post state of mind.

The Court of Criminal Appeals has already disavowed this type of evidence as corroborative of a crime and a recent attempt to circumvent the corpus delicti rule by finding that the extrajudicial confessions are trustworthy.

Evidence showing motive, intent, opportunity, and the state of mind of a defendant are not probative evidence absent evidence that conduct occurred that could tend show sexual contact of an indecency with child. See *Hacker v. State*, 389 S.W.3d 860, 873. This typed evidence is unimportant if the prohibited conduct has not been established. *Id.* They are not even some evidence that a crime has occurred by someone. *Id.* at 871. The Ninth Court of Appeals references no evidence that tends to establish the indecency with child by itself, a sexual contact. See *Id.* at 870. Without that critical evidence, any contextual background information such as to time, motive, opportunity, and/or state mind of Shumway to engage in the criminal act of an indecency with a child is not independent evidence that he actually did so; consequently, the corpus delicti rule cannot be satisfied. See *Id.* at 860, 871, 873.

Most noteworthy, the Ninth Court of Appeals was aware of the 2015 case in *Miller v. State* in which the Court of Criminal Appeals declined to modify the corpus delicti rule with a trustworthiness rule, but nonetheless attempts to force a trustworthiness of confession rule in the name of corroborating evidence of the corpus delicti. (Opinion pg 12)

In *Miller v. State*, 457 S.W.3d 919,920-923, the Court of Criminal Appeals granted petition for discretionary review to not only to decide whether the corpus delicti rule was satisfied but also to determine whether the rule needed to be reformulated to remove the corroboration requirement in extrajudicial confession cases and focus on the defendant's confession and its trustworthiness, see below:

(2) If the corpus delicti rule is retained, should it be reformulated to focus on the defendant's confession and consider whether there is substantial independent evidence which would tend to establish its trustworthiness? (RR 6 at State's Exhs. 2, 3, 7, 8). See *Miller*, No. 02-12-00487-CR, slip op. at 5-7. *Id.* at 922.

The Court answered yes to retain the corpus delicti rule and no to a reformulation, and expressly stated “that the corpus delicti rule should not be abolished or replaced with a trustworthiness standard.” *Id.* at 926. It

reaffirmed the important function of the rule and its application in Texas jurisprudence for more than 160 years. *Id.* at 927.

Court of Criminal Appeals precedent dictates that independent evidence must corroborate Shumway's extrajudicial confession, as applied here, C.S.'s testimony must corroborate Shumway's extrajudicial confession, it must at the very least tend to show some of the corpus delicti of an indecency with a child itself, sexual contact with criminal intent. See *Miller v. State*, 457 S.W.3d 919, 924; *Hacker v. State*, 389 S.W.3d 860, 866; *Salazar v. State*, 86 S.W.3d 640.

Examination of the independent evidence here clearly shows the Court of Appeals did not follow corpus delicti precedent because the court found the evidence legally sufficient despite zero evidence regarding the essential nature of an indecency with a child charge. The extrajudicial confession was not corroborated by evidence of a sexual contact.

In accordance with the corpus delicti rule Petitioner's convictions for indecency with child are not supported by legally sufficient evidence.

Failure to grant Petitioner relief will embolden other Courts of Appeals to create exceptions to the corpus delicti rule which in turn may eventually lead to the watering down of or the elimination of the rule altogether.

7. *Hacker and Miller* supersede *Salazar*

The Ninth concludes that “some evidence exists outside of the extrajudicial confession which, considered alone or in connection with the confession, shows that the crime actually occurred.” *Salazar*, 86 S.W.3d at 645. In addition, the Ninth cites a sister Court of Appeals in *Turner v. State*, 877 S.W.2d 513 (Tex. App.—Fort Worth 1994, no pet.), to support this position. In *Turner*, the Fort Worth Court of Appeals stated that, “proof of the corpus delicti need not be made independent of an extrajudicial admission. If there is some evidence corroborating the admission, the admission may be used to aid in the establishment of the corpus delicti.” *Id.* at 515.

Salazar (2002) and the *Turner* (1994) case from the Court of Appeals give the impression that the independent evidence does not need to at least tend to show that the crime occurred on its own, a direct contradiction to more recent cases from the Court of Criminal Appeals.

Hacker v. State, 389 S.W.3d 860 (TEX. CRIM. APP. 2013) and *Miller v. State*, 457 S.W.3d 919 (TEX. CRIM. APP. 2015) supersede *Salazar* and *Turner* as they are more recent decisions by the Court of Criminal Appeals. The independent evidence must show the essential nature of the crime was

committed by someone. *Miller v. State*, 457 S.W.3d 919, 924; *Hacker v. State*, 389 S.W.3d 860, 866.

8. Conclusion

The Court of Criminal Appeals should intervene and reverse the Ninth Court of Appeals Judgment because despite cementing the corpus delicti rule after *Miller v. State* in 2015, the Court of Appeals insists on improperly circumventing the core corroboration requirement of the rule. It attempts to disguise a trustworthiness rule with evidence of background as to time, place, motive, and opportunity within the framework of the corpus delicti rule to show corroboration when the record contained zero evidence, outside of the extrajudicial confessions, that indicates sexual contact in reference to an indecency with child charge.

In Petitioner's case since there are no qualifying independent facts which corroborate his extrajudicial confession, such as evidence which tends to show sexual contact, like witness testimony to the act, injuries, and biological evidence, the evidence is legally insufficient to support Shumway's convictions for indecency with child.

Reversal is warranted and will emphasize the significance of evidence independent of the extrajudicial confession to show the 'essential nature' of

the charged crime was committed by someone and solidify the jurisprudence on corpus delicti.

PRAYER

Petitioner/Appellant respectfully requests the Honorable Texas Court of Criminal Appeals to reverse the Judgment of the Ninth Court of Appeals, reverse Petitioner Bradley Shumway's convictions for indecency with child, and enter or order a Judgment of Acquittal in each cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and complete copy of Petitioner/Appellant's Brief was served on the 17th day of August 2020.

Via Efile service to The Montgomery County District Attorney's Office, Bill Delmore.

Via Efile service to Ms. Stacey M. Soule, State's Prosecuting Attorney.

/s/ Richard Martin P. Canlas
Richard Martin P. Canlas
Lawyer for Appellant

CERTIFICATE OF COMPLIANCE WITH RULE 9.4

I hereby certify that this document complies with the requirements of Rule 9.4(i)(2)(B) of the Texas Rules of Appellate Procedure because there are 4,874 words in this document, excluding those portions of the document excepted from the word count rule under Rule 9.4(i)(1), as calculated by the word processing program used to prepare it.

/s/ Richard Martin P. Canlas
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